



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1995

Ms. Melissa Winblood
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR95-010

Dear Ms. Winblood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 23633.

The City of El Paso (the "city"), which you represent, has received a request from the United States Department of Justice Immigration and Naturalization Service for information relating to the attendance and personal information records of a child attending a city operated child care facility which is licensed by the Texas Department of Protective and Regulatory Services ("TDPRS"). Specifically the requestor seeks certain information relating to a child attending the day care center including:

A copy of the contract or other registration form from the Westside Recreation Center, which would show the residence of [the child] and her parents.

A copy of the signature card which would show who is authorized to deliver and/or pick up [the child] from the Westside Recreation Center.

Copies of the day care attendance records of [the child], from the Westside Recreation Center.

Copies of any records showing who has been delivering and/or picking up [the child] from the Westside Recreation Center.

In seeking a decision with respect to all of the requested documents, the city asserts that the information is protected under section 552.101 of the act in conjunction with section 715.204 title 40 of the Texas Administrative Code, the regulations regarding the duty to maintain certain records for inspection by TDPRS.

The Texas Administrative Code contains extensive provisions relating to the disclosure of information related to TDPRS clients. See 40 T.A.C. ch. 734. Although you suggest that these provisions apply in this matter, you have not explained, nor is it apparent from the documents submitted for our review, that the child who is the subject of the request is a TDPRS client. Therefore you may not withhold the information pursuant to title 40, chapter 734 of the Texas Administrative Code.

You also suggest that section 715.204, title 40 of the Texas Administrative Code is the operative provision for purposes of our analysis. Section 715.204 merely provides that:

(a) [T]he school must have records of daily attendance of children and staff for the previous three months. The hours staff worked must be recorded.

....

(c) All required records must be available at the school for the department to inspect during hours of operation.

Id. § 715.204. While the provision mandates that disclosure of such records be made to TDPRS, there is no language to indicate that such disclosure to third parties is prohibited.

We now address your claim that section 552.101 excepts the requested information from required public disclosure. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 thus incorporates the doctrines of other statutory provisions that make specified documents confidential. Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* is of no legitimate concern to the public. See Open Records Decision No. 328 (1982).

Section 552.101 may be read in conjunction with V.T.C.S. article 4495b, section 5.08(b), the Medical Practices Act, which provides that:

[R]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

Thus, records indicating that they were prepared by or under the supervision of a physician are excepted from required public disclosure. *See* Open Records Decision No. 370 (1983).

We have examined the information submitted to us for review. Having examined the arguments submitted to us for review, we conclude that the information which you seek to withhold under section 552.101 of the Government Code in conjunction with title 40 section 715.204 of the Texas Administrative Code is not excepted from disclosure on common-law privacy grounds. However, the medical records contained within the requested information are excepted from required public disclosure, and therefore may be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Toya Cirica Cook
Assistant Attorney General
Open Government Section

TCC/LRD/rho

Ref.: ID# 23633

Enclosures: Submitted documents

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(w/o enclosures)